

REMARKS

Claims 1-27 are pending in this application. Claims 1-12, 20, 21 and 27 are rejected. Claims 13-19 and 22-26 are indicated to be allowable, subject to objection. None of the claims are currently amended. Reconsideration and further examination are respectfully requested.

Claims 12, 20 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pub. No. 2002/0156914 (“*Lo*”). It is well established that “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). *Lo* describes a controller for managing bandwidth in a communications network. With regard to the claimed optical service agent which determines which communication services are required by a user application, the Office cites *Lo* at paragraphs [0009, 0026-0033, and 0038-0046]. Applicant respectfully traverses. Paragraph 0009 of *Lo* states that the service controller sets up paths and balances bandwidth. Paragraphs 0026-0033 describe a network in which the paths are set up and bandwidth balanced, and paragraphs 0038-0046 describe how path setup and bandwidth management can be implemented. Applicant is unable to find a teaching that communication services required by a user application are first determined and subsequently used for provisioning. Indeed, paragraphs 0041-0042 of *Lo* specifically state that connectivity is established based on “user-defined policies” and “user-defined traffic requirements.” In contrast, claim 12 recites that an optical service agent is operable “to **determine a set of communication services required by the user application,**” and “provision the set of communication services for the user application.” In other words, the claimed optical service agent distinguishes *Lo* by provisioning based on application requirements rather than user-defined policies. It should also be noted that the presently claimed invention and

Lo are not mutually exclusive. In particular, one might use the presently claimed invention to determine services to be provisioned, and subsequently use the *Lo* technique for management of the provisioned bandwidth.

With regard to claim 20, the Office cites the same set of paragraphs, [0009, 0026-0033, and 0038-0046], as teaching the claimed network user application comprising the optical service agent. In view of the points made above, it will be appreciated that claim 20 distinguishes *Lo* by reciting “a network user application coupled to the optical communication network, wherein the network user application comprises an optical service agent for **obtaining optical communication services** from the optical communication network via a user-to-network interface (UNI) **sufficient to support operation of the network user application.**” (emphasis added) Claim 21 is a dependent claim which is allowable for the same reason as claim 20. Although the 102(e) rejection based on *Lo* was not specifically applied to the claim sets based on claims 1 and 6, Applicant assumes that the Examiner may have intended to do so since those claims were neither allowed nor indicated to be allowable. However, claims 1 and 6 recite distinguishing limitations which are similar to those recited above from claims 12 and 20.

Claims 1 and 6 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. In particular, the Examiner states that the claims do not indicate a final result which provides practical application. The Examiner essentially argues that building a highway would be non-statutory until a car drove upon it. Applicant respectfully traverses. An invention falls within the scope of 35 U.S.C. 101 if it physically transforms an article or physical object to a different state or thing, or if the claimed invention otherwise produces a useful, concrete, and tangible result. Useful means that the result is specific, substantial and credible. Concrete means that the result is substantially repeatable. Tangible means there is a “real-world result.”

The PTO bears the burden of presenting a *prima facie* 101 rejection, and if the record as a whole suggests that it is more likely than not that the claimed invention includes a practical application, the Examiner should not reject the claim. As recited in claim 1, the method includes “ascertaining communication requirements and non-requirements of the user application; determining a set of optical network communication services for the user application based at least in-part upon the ascertained communication requirements and non-requirements of the user application, the communications services including at least one of unshared lightpath, shared lightpath, routed path, latency, error rate, and protection mechanism; and obtaining, from the optical network, the ascertained communication services for the user application.” Obtaining ascertained communication services is certainly specific, substantial, credible, and repeatable, because the services obtained are based upon the ascertained communication requirements. Applicant therefore assumes that the Examiner feels that obtaining network services is somehow not a “real world result.” Applicant disagrees. Obtaining network services is a real world result because it causes network resources to be reserved and configured, which affects other applications. Further, configuring and reserving network resources at a minimum changes the state of memories, i.e., physically transforms an object. Claim 6 is statutory for the same reasons. In particular, claim 6 recites “network component logic for obtaining the communication services for the user application,” which will cause network resources to be reserved and configured.

For the reasons stated above, this application is now considered to be in condition for allowance and such action is earnestly solicited. The Office is encouraged to contact Applicants' Attorney at 978-264-4001 to discuss any issues which might expedite allowance of this application.

Respectfully Submitted,

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Date

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